IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRANDON E., et al.,	:	
Plaintiffs	:	CIVIL ACTION
	:	
v.	:	
	:	
The Honorable ABRAM FRANK REYNOLDS, et al.,	:	No. 98-4236
Defendants	:	
	:	

MEMORANDUM AND ORDER

YOHN, J. February , 1999

Plaintiffs are three minors who are challenging Act 53,[1] a recently enacted Pennsylvania statute that allows parents or guardians to petition courts to order involuntary commitment of their children to drug treatment programs. The plaintiffs bring the suit under § 1983, challenging the constitutionality of the statute on due process and equal protection grounds and asserting that it is unconstitutional both on its face and as applied to them in Act 53 proceedings. Defendants in the suit are the three Pennsylvania court of common pleas judges who presided over the state actions involving the plaintiffs and the administrative judge responsible for assigning Act 53 cases to judges in the Philadelphia Court of Common Pleas.

[1] Act of Nov. 26, 1997, No. 53, § 3, 1997 Pa. Laws 622 (amending Pennsylvania Drug and Alcohol Abuse Control Act, 71 Pa. Cons. Stat. Ann. § 1690.101 et seq. (West 1997)) ("Act 53").

Before the court is defendants' motion to dismiss. Defendants argue that they are not the proper parties to defend the constitutionality of this statute under § 1983, because, as neutral adjudicators, they do not have interests regarding Act 53 that are adverse to the plaintiffs. For similar reasons, defendants also claim that no case or controversy exists under Article III of the Constitution making plaintiffs' claim nonjusticiable.[2] Plaintiffs contend that the judges are enforcers of the statute and as such are proper defendants in this lawsuit under § 1983. Moreover, as enforcers of the statute, the judges have interests adverse to those of the plaintiffs sufficient to create a case or controversy under Article III. After careful consideration of the parties' arguments, I agree that the judges are not proper defendants in this suit. Therefore, defendants' motion to dismiss will be granted.

I. Legal Standard

Defendants have filed a motion to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12 (b)(6). The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). In deciding a motion to dismiss, the court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the [non-moving party]." Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d

[2] Defendants also argue that the Rooker-Feldman doctrine, the Eleventh Amendment, and the Federal Courts Improvement Act all prevent this court from granting relief on all or some of plaintiffs claims. Alternatively, they urge the court to abstain under the Pullman, Younger, and Burford abstention doctrines. Because I have determined that defendants are not proper parties under § 1983 and am dismissing the case on that basis, I need not address these other contentions.

1250, 1261 (3d Cir. 1994) (citing Rocks v. Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989)). At this stage of the litigation then, "[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

II. Background

In their complaint, plaintiffs aver the following facts. Plaintiffs Brandon E., Joy E., and Josh R. are minors whose parents sought court-ordered involuntary commitment of them to drug and alcohol treatment programs under Act 53. Defendants are the Honorable Abram Frank Reynolds and the Honorable Gwendolyn Bright, both judges in the Family Court Division of the Philadelphia Court of Common Pleas, Family Court Division, the Honorable Paul Panepinto, the Administrative Judge for the Philadelphia Court of Common Pleas, and the Honorable Arthur E. Grim, a judge in the Berks County Court of Common Pleas, Family Court Division.[3] Act 53 provides for court-ordered, involuntary commitment of minors to drug and alcohol treatment.[4]

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[3] Plaintiffs' motions to certify both a defendant and plaintiff class are currently pending before this court. I postponed deciding both issues until resolution of this motion to dismiss.

[4] The applicable language of the Act is as follows:

> (a) A parent or legal guardian who has legal or physical custody of a minor may petition the court of common pleas . . . for commitment of the minor to involuntary drug and alcohol treatment services, including inpatient services if the minor is incapable of accepting or unwilling to accept voluntary treatment. The petition shall set forth sufficient facts and good reason for the commitment. . . .
> (b) Upon petition pursuant to subsection (a), the court:
> (1) Shall appoint counsel for the minor.
> (2) Shall order a minor who is alleged to have a dependancy on drugs or alcohol to undergo a drug and alcohol assessment performed by a psychiatrist, a licensed psychologist with specific training in drug and alcohol assessment and treatment

Plaintiffs have brought suit under § 1983 seeking to have Act 53 declared unconstitutional on its face and as applied to these three minors.

A. Brandon E.

According to plaintiffs' complaint, on June 23, 1998, Brandon E.'s father petitioned the Philadelphia Court of Common Pleas, Family Court Division for involuntary commitment of Brandon for his alleged addiction to alcohol and marijuana. Complaint at 9. Judge Reynolds held a hearing on July 15, 1998, at which time he ordered that Brandon be assessed for drug and alcohol dependence. See id. at 10. That same day, a certified addiction counselor ("CAC")

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or a certified addiction counselor. Such assessment shall include a recommended level of care and length of treatment. Assessments completed by certified addiction counselors shall be based on the Department of Health approved drug and alcohol level of care criteria and shall be reviewed by a case management supervisor in a single county authority.

The court shall hear the testimony of the persons performing the assessment under this subsection at the hearing on the petition for involuntary commitment.

(c) Based on the assessment defined in subsection (b), the court may order the minor committed to involuntary drug and alcohol treatment, including inpatient services, for up to forty-five days if all the following apply:

(1) The court finds by clear and convincing evidence that:

(i.) the minor is a drug dependent person; and

(ii.) the minor is incapable of accepting or unwilling to accept voluntary treatment services.

(2) The court finds that the minor will benefit from involuntary treatment services.

(d) A minor ordered to undergo treatment due to a determination pursuant to subsection (c) shall remain under the treatment designated by the court for a period of forty-five days unless sooner discharged.

Act of Nov. 26, 1997, No. 53, § 3, 1997 Pa. Laws 622, 623-24 (amending Pennsylvania Drug and Alcohol Abuse Control Act, 71 Pa. Cons. State. Ann. § 1690.112a (West 1997)). The court may commit the minor to subsequent forty-five day periods of treatment if, after conducting a review hearing, it determines that further treatment is warranted and will benefit the minor. Id.

performed the assessment at the Philadelphia Family Court using the Adolescent Problem Severity Index ("APSI").[5] See id.

At a hearing before Judge Reynolds on August 3, 1998, the CAC presented a written report and recommendation that advocated committing Brandon to an inpatient drug treatment for a period of sixty to ninety days. See id. Plaintiffs allege that, to avoid involuntary commitment, Brandon elected to take part in an outpatient drug treatment program. See id. Subsequent to the filing of the complaint, Brandon was adjudicated a delinquent child under the Juvenile Act, 42 Pa. Cons. Stat. Ann. § § 6301 and Judge Reynolds dismissed the Act 53 petition on September 16, 1998. See Plaintiffs' Mem. of Law in Opposition to Defs.' Mot. to Dismiss ("Pl.'s Resp.") at 7.

B. Joy E.

Joy E.'s mother filed an Act 53 petition in Philadelphia Family Court on June 18, 1998. According to plaintiffs, Joy appeared before Judge Reynolds on July 15, 1998. See Complaint at 11. Although the complaint is unclear regarding the exact sequence of events, apparently, during this hearing the judge ordered an assessment of Joy and a CAC then performed an evaluation using the APSI. See id. The CAC did not prepare a written report of the results. See id. At this same hearing, Judge Reynolds ordered Joy to undergo two urine tests each week and continued the hearing until August 7, 1998. See id. At the August 7 hearing, the judge again ordered bi-weekly urine tests and continued the proceedings. See id. At a subsequent hearing on September

[5] Plaintiffs contend that the APSI is not a diagnostic tool and should not be used to evaluate the existence or level of an individual's dependency on drugs or alcohol. See Complaint at 10.

14, 1998, Judge Reynolds dismissed the petition against Joy after emancipating her from the custody of her parents. See Pl.'s Resp. at 7.

C. Josh R.[6]

The Act 53 petition against Josh R. was filed by his mother on March 16, 1998, in the Berks County Juvenile Court. See Pl.'s Resp. at 8. After his assessment, Josh voluntarily agreed to enter an inpatient drug and alcohol treatment program. See id. Since the time of that agreement, Josh has been adjudicated a dependent child under the Juvenile Act, 42 Pa. Cons. Stat. Ann. §§ 6301 et seq., and the judge suspended the Act 53 proceedings.[7] See id.

III. Discussion

Plaintiffs claim that Act 53 is unconstitutional in that it violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment both facially and as applied to these three minors.[8] Defendants assert that they are not proper parties to defend a constitutional challenge of Act 53. See Defendants' Mem. of Law in Support of the Motion to Dismiss ("Mot.

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[6] Josh R. became a named plaintiff in this suit following the consolidation of this case with case number 98-2384.

[7] The complaint does not disclose whether any of the named plaintiffs challenged the constitutionality of Act 53 in their individual proceedings.

[8] Plaintiffs make the following Fourteenth Amendment Due Process claims: (1) the language of the Act is unconstitutionally vague; (2) Act 53 deprives minors of their liberty without due process; (3) the Act fails to require that judges order the minimum treatment necessary to meet the minor's needs; and (4) it "compromises the neutrality of the presiding judge." Complaint at 22-26. Additionally, plaintiffs claim that the Act denies minors the same procedural due process rights that similarly situated individuals receive under Pennsylvania's Mental Health Act in violation of the Equal Protection Clause. See id. at 25.

to Dismiss") at 4-6. The judges contend that in their role of neutral arbiters they are not adversaries of plaintiffs, therefore, under § 1983 they are not proper parties. See id. Furthermore, they contend that no case or controversy exists under Article III of the Constitution. See id.; Defendants' Reply Mem. at 2. In opposition, plaintiffs argue that § 1983 contains no inherent bar to claims for prospective relief against state judges. See Pl.'s Resp. at 9-14. Moreover, plaintiffs contend that under the Act, judges are forced to play an enforcement role with interests adversarial to plaintiffs' interests, thus making them proper parties and creating a case or controversy sufficient to satisfy Article III jurisdictional requirements. See Pl.'s Resp. at 16.

The Supreme Court in Pulliam v. Allen, 466 U.S. 522 (1984), determined that judicial immunity does not bar suits for prospective relief against state judges under § 1983.[9]

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[9] Although defendants are not claiming judicial immunity under § 1983, the issue warrants a brief discussion because it serves as a backdrop to the issues raised by defendants in this motion. In a series of opinions dating from 1880, the Supreme Court addressed the question of whether any form of judicial immunity exists under § 1983 that would shield judges from suit. In Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 (1980), the Court held that plaintiffs could properly sue judges acting in an enforcement capacity in enforcing the Bar Code because in such instances they are no different than any other enforcement officer or agency. The Court noted that the Bar Code gave the Supreme Court of Virginia independent authority of its own to initiate proceedings against attorneys, an enforcement power, and thus, the court and its members were proper defendants in a suit for declaratory and injunctive relief. The Court declined to decide whether any immunity existed for judges sued for prospective relief for acts in their judicial or adjudicatory capacity. See Id.

Four years later, the Court in Pulliam v. Allen, 466 U.S. 522, 541-42 (1984), put to rest the question of whether judges enjoyed any judicial immunity under § 1983 stating that "judicial immunity is not a bar to prospective relief against a judicial officer acting in her judicial capacity." As it had in Consumers Union, the Pulliam Court cited Ex Parte Virginia, 100 U.S. 339, 346 (1880), in which the Supreme Court had reiterated the scope of § 1983 as serving to 'enforce the provisions of the Fourteenth Amendment against all state action, whether that action be executive, legislative, or judicial." Consumers Union, 446 U.S. at 735 n.14; see also Pulliam, 466 U.S. at 541 n.21.

Note that in Pulliam, the defendant magistrate judge did not raise the issue of the award

Nevertheless, the Court in Pulliam acknowledged that other limitations exist to limit the availability of relief against judges. See id. at 537-38 & n.18 (citing requirements necessary to obtain equitable relief and "case or controversy" requirement of Article III). In an earlier case, the First Circuit discussed at length two such limitations -- the case or controversy requirement cited by the Court in Pulliam and the necessity that judges, when forced to defend the constitutionality of a statute, actually have a stake in upholding the statute. See In re Justices of the Supreme Court of Puerto Rico, 695 F.2d 17 (1st Cir. 1982).

In In re Justices, attorneys sued the Puerto Rico Supreme Court challenging a statute that required all attorneys to belong to and pay dues to the bar association. In re Justices, 695 F.2d at 19. The bar association had filed disciplinary complaints against some, but not all, of the plaintiffs for non-payment of their dues. See id. Ruling on the complaints, the Commonwealth's supreme court determined that bar requirements were valid and ordered the attorneys to pay the dues. See id. Those and other attorneys then filed suit in federal court naming the supreme court justices as defendants. The justices sought a writ of mandamus from the court of appeals claiming that the district court did not have jurisdiction over the matter because no case or

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of injunctive relief against her on appeal. See Pulliam, 466 U.S. at 541-42. Consequently, the Court did not decide whether the defendant had acted in her judicial capacity so as to make injunctive relief against her proper. See id. The court determined only that § 1983 did not pose an absolute bar to the injunctive relief granted against the judge in order to decide the actual issue on appeal -- whether judicial immunity barred an award of attorneys' fees in a suit in which a judge was the defendant. See id.

Since Pulliam was decided, Congress passed the Federal Courts Improvement Act of 1996 ("FCIA") which limits the availability of injunctive relief against judges. See Kampfer v. Scullin, 989 F. Supp. 194, 201 (N.D.N.Y. 1997). Under these amendments to § 1983, a plaintiff may not obtain an injunction against a judge acting in his or her judicial capacity unless the judge has violated a declaratory decree or declaratory relief is unavailable. See 42 U.S.C. § 1983. Plaintiffs in this action are seeking declaratory relief.

controversy existed as is required by Article III of the Constitution. See id. at 21.

Addressing the justices' jurisdictional argument, the First Circuit opined that "ordinarily, no 'case or controversy' exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute." Id. The court gave a number of reasons for this. First, "[j]udges sit as arbiters without a personal or institutional stake on either side of the constitutional controversy." Id. Second, "[a]lmost invariably, they have played no role in the statute's enactment." Id. Third, "they have not initiated its enforcement." Id. Finally, "they do not even have an institutional interest in following their prior decisions (if any) concerning its constitutionality if an authoritative contrary legal determination has subsequently been made." Id. Consequently, the court reasoned, "one seeking to enjoin the enforcement of a statute on constitutional grounds ordinarily sues the enforcement official authorized to bring suit under the statute." Id. Under the First Circuit's Article III "case or controversy" analysis then, the existence of "adverse legal interests" between plaintiffs and defendant judges depends upon whether the judges acted "as neutral adjudicators" or "administrators, enforcers, or advocates." Id. at 21.

Rather than deciding the case on this constitutional basis, the court instead held that the justices were not proper parties under § 1983. The First Circuit reasoned that judges who are not acting in an enforcement or administrative capacity have "no stake in upholding the statute against constitutional challenge." See id. at 22 (citing Mendez v. Heller, 380 F. Supp. 985 (E.D.N.Y. 1974), aff'd 530 F.2d 437 (2d Cir. 1976), and Gras v. Stevens, 415 F. Supp. 1148 (S.D.N.Y. 1976)). For this reason, "§ 1983 does not provide relief against judges acting purely in their adjudicative capacity, any more than, say, a typical state's libel law imposes liability on a

postal carrier or telephone company for simply conveying a libelous message." Id. at 22. Therefore, naming as defendants judges who act only as neutral arbiters in disputes fails to state a claim for which relief can be granted. See id.

As with the Article III case or controversy analysis, determining whether a judge is proper party under § 1983 turns on his or her function in relation to the statute at issue. In In re Justices, the First Circuit declared that in those instances when the supreme court justices initiated disciplinary proceedings against attorneys they would be enforcing the statute. See id. at 24. When, however, others initiated the actions over which the supreme court presided, the justices acted in an adjudicative capacity. See id.

The Third Circuit had the opportunity to address the propriety of naming judges as defendants and to discuss the adjudicatory/enforcement distinction in Geogevich v. Strauss, 772 F.2d 1078 (3d Cir. 1985), cert. denied, 475 U.S. 1028 (1986). The plaintiffs in Georgevich were state prisoners who brought a § 1983 class action suit against Pennsylvania common pleas judges. See id. at 1081. Under a Pennsylvania statutory scheme, common pleas judges had the power to make parole decisions for prisoners serving sentences in state prisons for less than two years. See id. The prisoners alleged equal protection violations, claiming that they were not afforded the same parole procedures as similarly situated prisoners serving less than two-year sentences in county prisons. See id. at 1082-83.

The defendant judges argued that they were not the proper parties to be sued because they were not enforcers of the parole statutes and thus no case or controversy existed. See id. at 1087. The court of appeals disagreed. Quoting In re Justices, the court stated that "[w]here a suit challenges 'statutes related to the judicial process or statutes previously enforced by the particular

judge against the plaintiff,' judges are proper parties." Id. at 1088. In this case the judges were not being sued in their adjudicatory capacity but rather in their enforcement capacity as "administrators of the parole power." Id. at 1087. The court found that the parole statute placed judges in the identical position as the parole board that made parole decisions regarding other classes of prisoners. See id. at 1087-88. Because a suit against the parole board for constitutional violations obviously presented a justiciable claim, the court found it inconceivable that in a suit against judges performing the same function, the judges would not be proper parties. See id. at 10. The court of appeals found further support for this determination in the fact that the statute vested the judges with broad parole authority which gave them the power to devise and effectuate rules that would provide the plaintiff prisoners with appropriate parole procedure.[10] See id. at 1089.

Plaintiffs in this action contend that the judges are the proper defendants because they too are challenging a statute "related to the judicial process" and "previously enforced by the particular judge against the plaintiff." Pl.'s Resp. at 16. In this respect plaintiffs contend that they are suing the defendants in their enforcement capacity. Specifically, plaintiffs seem to argue that the statute requires the presiding judge to act both as an adjudicator and an enforcer of the statute when presiding at Act 53 hearings. See Complaint at 26. They allege that once a minor's parent or guardian has filed the petition with the court, the parent or guardian ceases to play any role in the proceedings -- the Act does not require the parent/guardian to put on a case in support

[10] Prior to this decision, defendants had in fact drawn up a consent decree in which they agreed to implement various parole procedures. See Georgevich, 772 F.2d at 1082. The district court declined to approve the consent decree after some of the defendants objected to the federal court taking jurisdiction over the state court judges. See id.

of commitment beyond that stated in the petition at either the initial hearing, the hearing following the assessment, or any subsequent hearings. See id. Furthermore, the parents/guardians generally are not represented during the course of these events. See id. Consequently, plaintiffs argue, throughout Act 53 proceedings the judge must serve as both factfinder and prosecutor/petitioner. See id.

While it appears that Act 53 sets up a rather unique process of addressing parent/guardian petitions, based upon the language of the statute and the alleged facts, I find that the judges presiding over Act 53 proceedings are acting solely within their adjudicatory roles. Unlike in In re Justices, the defendant judges do not have the power to initiate actions against minors. Nor does Act 53 appear to delegate any administrative function to the judges as was the case with the parole proceedings in Georgevich. Parents and guardians invoke Act 53 and bring before the court disputes that require judicial determination. See Act of Nov. 26, 1997, No. 53, § 3, 1997 Pa. Laws 622, 623-24, ¶ (a) ("A parent or legal guardian who has legal or physical custody of a minor may petition the court of common pleas . . . for commitment of the minor to involuntary drug and alcohol treatment services . . . ."). That the evidence upon which the court makes its determination may come not only from the parties but also must come from an assessment conducted by a neutral professional, does not change the nature of the court's decision. The court still must evaluate the evidence contained in the assessor's report and recommendation which will be part of the record, and such other evidence as may be part of the record, and decide whether the evidence meets the clear and convincing standard necessary to order involuntary commitment. In this respect, the court is acting precisely as it does in any judicial proceeding. Even if the statute setting forth the procedures by which the court decides whether to commit a

child for drug treatment is ultimately deemed unconstitutional, the court's actions pursuant to that statute nonetheless remain adjudicatory. Thus, any decision made by the judges involving these plaintiffs were not acts of enforcement of the statute but rather adjudications on the merits of the cases before them.[11] See, e.g., Grant v. Johnson, 15 F.3d 146, 147-48 (9th Cir. 1994) (holding that judge who applies statute in "neutral fashion" has not acted as enforcer and thus is not proper party under § 1983).

I find instructive, the Eight Circuit's reasoning in R.W.T. v. Dalton, 712 F.2d 1225, 1227 (8th Cir.), cert. denied, 464 U.S. 1009 (1983). In R.W.T., a plaintiff class of juveniles claimed that they had been incarcerated without the benefit of a probable cause determination. Plaintiffs sought declaratory and injunctive relief against, among others, the state judges responsible for hearing juvenile detention cases. See id. at 1227. These judges presided over detention hearings that occurred after the juveniles had already been detained for an initial period. See id. At these hearings, the judges decided whether the juveniles required further detention based on the evidence and testimony presented. See id. at 1229.

Declining to decide the case on the basis of Article III, the Eighth Circuit held that the plaintiffs had failed to state a claim under § 1983. See id. at 1232-33. The court's decision again required evaluation of the judges' role in relation to the issues at bar in order to determine whether they were adjudicatory or enforcement in nature. See id. The court found that

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[11] I also note that none of the plaintiffs have actually been adjudicated drug-dependant and ordered into involuntary treatment. All three acceded to forms of voluntary treatment. Furthermore, the petitions against Brandon E. and Joy E. have been dismissed and the judge in Josh R.'s case has suspended proceedings against him. Thus, even if the judges' decisions in these cases could be deemed enforcement of the statute, arguably, no enforcement has taken place in regard to these plaintiffs.

regardless of whether the plaintiffs challenged the constitutionality of the state court's "practices" at these hearings or the state statutes themselves, the judges were not proper defendants. In so holding, the court of appeals reasoned that

> [t]he judges . . . in the course of deciding juvenile cases, are interpreting Missouri law and the United States Constitution as requiring no probable-cause hearings for detained juveniles. The fact that we disagree with them does not make their determination any less an act of disinterested adjudication. Their position is no more adverse to that of the plaintiffs than the position of any judge who rules adversely on a point of law to any litigant. Thus the judges were not proper defendants in this suit.

Id. at 1233.

The Eighth Circuit's reasoning is equally applicable to the case at bar. Even if the defendant judges' interpretation of the statute is unconstitutional, their decisions, right or wrong, regarding the minors' need for involuntary treatment made pursuant to Act 53 are neutral determinations of the applicable facts and law.

To support their contention that the judges are proper defendants, plaintiffs cite a number of decisions within the Third Circuit in which courts maintained actions against judicial defendants. All of these are distinguishable from the instant case. In De Long v. Brumbaugh, 703 F. Supp. 399 (W.D. Pa. 1989), a deaf woman sued the judge who had excluded her from a jury pursuant to a Pennsylvania statute that required that jurors be able to "speak and understand the English language." De Long, 703 F. Supp. at 402-03. The district court held that the judge had enforced the statute against the plaintiff and thus was not a neutral adjudicator.

Unlike the case at bar, the judge in De Long did not sit in judgment of a case brought before him by litigants. Instead, the judge invoked a statute on his own and used it to exclude a person from a jury in his courtroom thereby acting as an enforcer not an adjudicator. Equating

the actions of the judge in De Long to those of the present defendants would serve only to erase the line between enforcement and adjudication.

Plaintiffs also point to Santiago v. Philadelphia, 435 F. Supp. 136 (E.D. Pa. 1977). In that case, the class of juveniles challenged the conditions of confinement at the Youth Study Center ("Center") in Philadelphia. Santiago, 435 F. Supp. at 142. The court allowed the case to proceed against the defendant family court judges holding that the judges did not enjoy any immunity from suit for acts and decisions made in their administrative capacity. Id. at 146. The district court found that the judges had certain management responsibilities with regard to the Center's operations--they appointed the Center's Board of Managers, and that plaintiffs were suing the judges in their management capacity. Id. No such administrative role exists for the judges under Act 53.[12]

Contrary to plaintiffs' assertions, recent § 1983 case law supports the proposition that judges, such as those named as defendants in this suit who have not acted in an enforcement capacity by initiating actions against the plaintiffs, are not proper defendants under § 1983. See, e.g., Grant, 15 F.3d 146 (9th Cir. 1994) (holding that presiding judge in action to appoint

[12] In the final two cases cited by plaintiffs, both determined prior to Pulliam, the courts explicitly stated that they were not deciding whether judicial immunity existed for the defendant judges. In neither case did the defendants raise the justiciability issue under Article III or assert that the defendants were not proper parties under § 1983. Consequently, neither court discussed what the judges' roles were in regard to the issues involved in the suit. See Conover v. Montemuro, 477 F.2d 1073, 1092 (3d Cir. 1973) (en banc court adopted three-judge panel's decision except for portions discussing judicial immunity under § 1983, explicitly stating that court was withholding any view upon subject of immunity and any functional distinctions that would affect it); Coleman v. Stanziani, 570 F. Supp. 679, 681 n.1 (E.D. Pa. 1983) (court refused to determine whether the judges and probation officers enjoyed good faith immunity from suit because other named plaintiffs were valid defendants and determination was not necessary in light of the court's ultimate decision).

temporary guardian acted as neutral adjudicator and was not proper defendant under § 1983); Fellows v. Raymond, 842 F. Supp. 1470 (D. Me. 1994) (holding that judge not proper defendant in case challenging constitutionality of Maine's temporary guardianship statute even where no other state actor available to serve as defendant); Johnson v. New Jersey, 869 F. Supp. 289, 295 (D.N.J. 1994) (noting that judge presiding over custody proceeding is not proper party to defend constitutional challenge of law requiring husband but not wife to file affidavit in custody actions).

Given that their role in Act 53 proceedings encompasses only adjudicative determinations, the judges in this case are not proper defendants in this suit.[13] Therefore, I

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[13] Although I have refrained from basing my decision to dismiss plaintiffs' claims on the lack of a case or controversy, choosing instead to ground the decision on a non-constitutional basis, I note that Article III appears to present a significant impediment to plaintiffs' ability to maintain their suit against the defendant judges. Given the parallels between the proper party analysis under § 1983 and case or controversy analysis, see In re Justices, 695 F.2d at 22-23, 25, the likelihood exists that plaintiffs' complaint fails to present a justiciable claim.

Plaintiffs contend that because the case or controversy requirement of Article III involves the courts' subject matter jurisdiction, which cannot be waived by parties, cases in which courts have allowed plaintiffs to maintain suits against judges demonstrate that Article III is not truly a bar to suing judges. To support this contention, plaintiffs point to the cases cited in the previous discussion, and a number of cases (notably, all decided prior to In re Justices and Pulliam) in which the defendants did not contest their defendant status and the courts never raised the Article III issue. See WXYZ, Inc. v. Hand, 658 F.2d 420 (6th Cir. 1981); Fernandez v. Trias Monge, 586 F.2d 848 (1st Cir. 1978); Rivera v. Freeman, 469 F.2d 1159 (9th Cir. 1972); Kendall v. True, 391 F. Supp. 413 (W.D. Ky. 1975).

While plaintiffs' contention regarding a court's responsibility for raising the case or controversy issue is true, their argument would not affect the court's decision if it were to decide the case on constitutional grounds. Plaintiffs' argument serves only to call into question these earlier decisions in which the issue was not raised rather than defendants' argument that Article III bars relief in this case. Moreover, the fact remains that where defendants have raised the issue, courts have found that judges acting as neutral adjudicators are not proper defendants for lack of a case or controversy. See Childrens & Parents Rights Assoc. of Ohio, Inc. v. Sullivan, 787 F. Supp. 724, 732 (N.D. Ohio 1991) (holding that no case or controversy existed between plaintiffs attacking constitutionality of federal child support laws and state judge); Smith v. Wood, 649 F. Supp. 901 (E.D. Pa. 1986) (holding that no case or controversy exited where

conclude that defendants' motion to dismiss must be granted.

plaintiff challenged Pennsylvania guardianship laws on First Amendment grounds).

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BRANDON E., et al.,	:	
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v.	:	
	:	
The Honorable ABRAM FRANK REYNOLDS, et al.,	:	No. 98-4236
Defendants	:	
	:	

ORDER

AND NOW, this day of February 1999, upon consideration of defendants' motion to dismiss, plaintiffs' response thereto, defendants' reply, and plaintiffs' surreply, IT IS HEREBY ORDERED that the motion to dismiss is GRANTED and plaintiffs' complaint is dismissed.

It is further ordered that all other pending motions are denied as moot.

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William H. Yohn, Jr., J.